

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
SOUTHERN DIVISION

**FILED**  
SEP 05 2012

MIDWEST FAMILY MUTUAL  
INSURANCE COMPANY,

Plaintiff,

vs.

LIBERTY MUTUAL GROUP, INC., and  
KNIFE RIVER MIDWEST, LLC,

Defendant.

Civ. 12-

12-4158

CLERK

**JOINT NOTICE OF REMOVAL AND  
JURY DEMAND**

Pursuant to 28 U.S.C. §§ 1332, 1441 and 1446, Defendants Liberty Mutual Group, Inc. ("Liberty Mutual Group") and Knife River Midwest, LLC ("Knife River") jointly file this Notice of Removal of this case from the Second Judicial Circuit Court, Minnehaha County, South Dakota. Defendants' short and plain statement of the grounds for removal is as follows:<sup>1</sup>

1. Plaintiff Midwest Family Mutual Insurance Company ("Midwest Family") filed its Petition against Liberty Mutual Group and Knife River in the Second Judicial Circuit Court, Minnehaha County, South Dakota.

2. Plaintiff served Liberty Mutual Group through its registered agent on August 6, 2012. *See Exhibit A*, Return of Service for Liberty Mutual Group.

3. Plaintiff served Knife River through its registered agent on August 6, 2012. *See Exhibit A*, Return of Service for Knife River.

<sup>1</sup> Defendants reserve the right to supplement this notice with additional facts, affidavits, or memoranda if necessary to effectuate removal.

4. Attached hereto as Exhibit A and incorporated herein by this reference is a copy of the Court file from the Second Judicial Circuit Court, Minnehaha County, South Dakota, containing true and correct copies of all process, pleadings, orders and other documents in said action setting forth plaintiff's claims for relief upon which such action is based. As required by 28 U.S.C. § 1446(a), Exhibit A also contains copies of all "process, pleadings and orders" served upon Liberty Mutual Group and Knife River.

5. Any civil action filed in state court over which the federal district courts would have original jurisdiction may be removed. 28 U.S.C. § 1441(a). Plaintiff seeks a declaration regarding its rights and obligations under a policy of insurance issued to Traffic Solutions, Inc., a subcontractor of Knife River. *See* Exhibit A, Complaint, generally. The issues in the declaratory judgment surround a May 19, 2009 motor vehicle accident involving Sheldon Lee and a lawsuit subsequently filed on Mr. Lee's behalf against Knife River and Traffic Solutions, Inc. *See* Exhibit A, Complaint, ¶¶ 19-20. As stated below, this case is removable because this Court has original subject matter jurisdiction on diversity grounds pursuant to 28 U.S.C. § 1332(a)(1) and (2).

**A. Plaintiff And Defendants Are Citizens Of Different States.**

6. Complete diversity of citizenship exists between Plaintiff and Liberty Mutual Group and Knife River

7. At the time of filing its Complaint, Midwest Family was a Minnesota corporation, with its principal place of business located in Minnesota. *See* Exhibit A, Complaint, ¶ 1; *See also* Exhibit B, Affidavit of Jacque Bass.

8. Liberty Mutual Group is a foreign insurance company organized and existing under the laws of the State of Massachusetts, with its principal place of business in the State of

Massachusetts. *See Exhibit A*, Complaint, ¶ 2; *See also Exhibit B*, Affidavit of Jacque Bass. Therefore, for purposes of this Notice of Removal, defendant Liberty Mutual Group is a citizen of a state other than South Dakota and Minnesota

9. Knife River is a limited liability company organized and existing under the laws of the State of Delaware, with its principal place of business in the State of Iowa. *See Exhibit A*, Complaint, ¶ 3. The sole member of Knife River is KRC Holdings, Inc., a Delaware corporation with its principal place of business in North Dakota. *See Exhibit C*, Affidavit of Karl Liepitz. Therefore, for purposes of this Notice of Removal, defendant Knife River is a citizen of a state other than South Dakota and Minnesota.

**B. Notice Of Removal Was Filed Within The 30-Day Limit Required By 28 U.S.C. § 1446(b) And All Procedural Requirements Have Been Met.**

10. Plaintiff served Liberty Mutual Group with the Complaint through its registered agent, who received the Complaint on August 6, 2012. *See Exhibit A*, Receipt of Service of Liberty Mutual Group. This removal is timely under 28 U.S.C. § 1446(b) in that it is filed within thirty (30) days of August 6, 2012.

11. Plaintiff served Knife River with the Complaint through its registered agent on August 6, 2012. *See Exhibit A*, Receipt of Service of Knife River. This removal is timely under 28 U.S.C. § 1446(b) in that it is filed within thirty (30) days of August 6, 2012.

**C. The Amount In Controversy Exceeds \$75,000.00, Exclusive Of Interest and Costs, As Required by 28 U.S.C. § 1332(a).**

12. The amount in controversy in this case exceeds \$75,000.00, satisfying the requirements of 28 U.S.C. § 1332(a). Plaintiff is seeking a declaration regarding Midwest Family's defense and indemnity obligations under a policy of insurance. The issues in the declaratory judgment surround a May 19, 2009 motor vehicle accident involving Sheldon Lee

and a lawsuit subsequently filed on Mr. Lee's behalf against Knife River and Traffic Solutions, Inc. See Exhibit A, Complaint, ¶¶ 19-20. Damages sought in the underlying action are "for an amount in excess of two million dollars." See Exhibit A, Complaint, and the Complaint attached thereto as Ex. C., ¶ 31. Therefore, the potential expense in defending the underlying civil action, along with the disputed potential indemnity amount, far exceeds \$75,000.

13. On the face of the Petition, the amount in controversy in this case exceeds \$75,000.00, satisfying the requirements of 28 U.S.C. § 1332(a).

**D. Removal To This District Is Proper.**

14. By reason of the amount in controversy and the complete diversity of citizenship of the parties, the action is within the original jurisdiction of this Court pursuant to 28 U.S.C. § 1332(a).

15. Pursuant to the provisions of 28 U.S.C. §1441(a) and 28 U.S.C. § 122, the United States District Court of South Dakota—Southern Division is the federal district court for the district embracing the place where the state court suit is pending and the cause of action arose.

16. Written notice of the filing of this Notice of Removal has been served on Plaintiff's counsel and a copy has been filed with the Clerk of Minnehaha County, South Dakota.

WHEREFORE, defendants Liberty Mutual Group, Inc. and Knife River Midwest, LLC state that they have divested the state court of jurisdiction by filing with that court a Notice of Filing this Notice of Removal, and requests that this Court proceed with adjudication of this matter.

**DEMAND FOR JURY TRIAL**

Defendants hereby request a trial by jury on all issues triable by a jury herein.

Dated this 5 day of September, 2012.

MAY & JOHNSON, P.C.

By 

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Attorneys for Defendants Liberty Mutual Group,  
Inc. and Knife River Midwest, LLC

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing **Joint Notice of Removal and Jury Demand** was served on Daniel E. Ashmore and Jeffrey Connolly, Gunderson, Palmer, Nelson & Ashmore, LLP, PO Box 8045, Rapid City, SD 57709, attorneys for Plaintiff, by mailing said copy to them at the foregoing address by United States mail, first class, postage prepaid thereon, this 5 day of September, 2012.



Eric DeNure